THE MUSSALMAN WAKF (BOMBAY AMENDMENT) ACT, 1935.

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BOMBAY ACT No. XVIII OF 1935.[1]

[THE MUSSALMAN WAKF (BOMBAY AMENDMENT) ACT, 1935.]

[*23rd September 1935.*]

Adapted and modified by the Adaptation of Indian Laws Order in Council.

An Act to amend the Mussalman Wakf Act, 1923, in its application to the Presidency of Bombay.

XLII of 1923. WHEREAS it is expedient to amend the Mussalman Wakf Act, 1923, in its application to the Presidency of Bombay for the purposes hereinafter appearing;

AND WHEREAS the previous sanction of the Governor General required by sub-section (*3*) of section 80A of the Government of India Act and the sanction of the Governor under section 80C of the said Act have been obtained for the passing of this Act;

5 & 6 Geo. V, c. 61.

It is hereby enacted as follows:—

1. This Act may be called the Mussalman Wakf (Bombay Amendment) Act, 1935. Short title.

XLII of 1923. 2. After the preamble of the Mussalman Wakf Act, 1923, hereinafter called the principal Act, the heading "Part I" shall be inserted. Heading after the preamble of XLII of 1923.

3. In section 2 of the principal Act,— Amendment of section 2 of XLII of 1923.

(*a*) after clause (*b*), the following shall be inserted, namely:—

"(*bb*) 'District' means a district constituted under section 3 of the Bombay Civil Courts Act, 1869, and includes the City of Bombay."

XIV of 1869.

(*b*) after clause (*e*), the following shall be added, namely:—

"(*ee*) 'Wakf Committee' means a committee constituted under section 6L."

4. After section 2 of the principal Act, the heading "Part II" shall be inserted. Heading after section 2 of XLII of 1923.

5. After section 6 of the principal Act, the following parts shall be inserted, namely:— Insertion of Parts III to VI in XLII of 1923.

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1935, Part V, pp. 28-29; for report of the Select Committee, *see ibid.*, pp. 91-96, 113-117 and 135-136 and for proceedings in Council, *see* Bombay Legislative Council Debates, 1935, Vols. XLI and XLII.

"PART III.

Powers of the Court to call for Particulars and Statement of Accounts.

Power of court to call upon the mutawalli to submit statement.

6A. (*1*) Notwithstanding anything contained in section 3, it shall be competent to the court, on failure of a mutawalli to furnish a statement as required under the said section, to require the mutawalli to furnish, within such time as the court shall fix, a statement containing all or any of the particulars referred to in the said section, including a copy of the deed or instrument, if any, creating the wakf.

(*2*) The provisions of section 4 shall apply to a statement furnished under this section as if such statement had been furnished under section 3.

Power of court to require statement of accounts at any time.

6B. (*1*) Notwithstanding anything contained in section 5, it shall be competent to the court, on failure of a mutawalli to furnish a statement of accounts as required under the said section, to require the mutawalli to prepare and furnish, within such time as the court may fix, a statement of accounts of the nature described in the said section and for such period as the court may think fit.

(*2*) The provisions of section 6 shall apply to any statement of accounts required to be furnished under this section as if such statement of accounts were a statement of accounts furnished under section 5.

PART IV.

Powers of the Court to Enquire.

Power of court to enquire.

6C. (*1*) The court may, either on its own motion or upon the application of any person claiming to have an interest in a wakf, hold an enquiry in the prescribed manner at any time to ascertain—

(*i*) whether a wakf is a wakf to which this Act applies;

(*ii*) whether any property is the property of such wakf and whether the whole or any substantial portion of the subject matter of such wakf is situate within the local limits of the jurisdiction of the court; and

(*iii*) who is the mutawalli of such wakf.

(*2*) If it comes to the knowledge of the court that a suit has been instituted in any civil court in regard to any of the matters mentioned in sub-section (*1*), it shall stay the enquiry so far as it relates to, or is likely to be affected by, the court's findings or order in regard to such matters, until the suit is finally decided in that court.

(*3*) The court shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit, it shall proceed with the enquiry in regard to such matters, if any, as may not have been decided in such suit.

(*4*) On completion of the enquiry provided for in sub-sections (*1*) and (*3*), the court shall record its findings as to the matters mentioned in the said sub-sections, except such matters as may have been decided in the aforesaid suit.

(*5*) Save as provided in this section, the court shall not, when acting under this section, try or determine any question of the title of any person claiming adversely to the wakf.

PART V.

Registration of Wakfs, Wakf Accounts and Wakf Administration Funds.

Registration of Wakfs.

6D. (*1*) The court shall, after the submission of a statement under section 3 or section 4 or section 6A and an enquiry, if necessary, held under section 6C, or merely after and enquiry held under section 6C, record, in such form as may be prescribed in a register called the Register of Wakfs, the following particulars :—

(*a*) a description of the wakf property sufficient for the identification thereof;

(*b*) the gross annual income from such property;

(*c*) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or during the period which has elapsed since the creation of the wakf, whichever period is shorter;

(*d*) the amount of the Government revenue and cesses and of all rents annually payable in respect of the wakf property;

(*e*) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (*c*) relate;

(*f*) the amount set apart under the wakf for—

(*i*) the salary of the mutawalli and allowances to individuals;
(*ii*) purely religious purposes;
(*iii*) charitable purposes;
(*iv*) any other purposes;

(*g*) the name of the mutawalli; and

(*h*) such other particulars as may be prescribed.

(*2*) Statements, if any, furnished under sections 3, 4 and 6A shall be filed with the said register of wakfs.

Amendment of entries in Register of Wakfs.

6E. (*1*) When any change occurs in any of the particulars recorded in the Register of Wakfs, the mutawalli shall, within three months of the occurrence of such change, report to the court such change in the prescribed form, accompanied by the prescribed fee. The provisions of sections 3 and 4 shall, so far as may be, apply to any such statement.

(*2*) For the purpose of verifying the correctness of the entries in the Register of Wakfs or ascertaining any change which may occurred in such register, the court may hold an enquiry in the prescribed manner. The provisions of section 6C shall, so far as may be, apply to any such inquiry.

(*3*) If the court, after receiving a report under sub-section (*1*) and holding an enquiry, if necessary, under sub-section (*2*), or merely after an enquiry held under sub-section (*2*), is satisfied that a change has occurred in any of the particulars recorded in the Register of Wakfs with regard to a wakf, it shall amend in the prescribed manner the entry or entries affected by such change and shall file the report furnished under sub-section (*1*) along with statement, if any, relating to the said wakf filed under section 3.

Entries in the Register of Wakfs and findings recorded under section 6C to be final subject to section 6G.

6F. The entries made by the court in the Register of Wakfs and the findings recorded under section 6C shall, subject to the provisions of section 6G, be final for the purposes of this Act.

Making or amendment of entries in Register of Wakfs by order of Court.

6G. A civil court of competent jurisdiction deciding any question relating to any wakf may direct that the court shall make such entries or amendments of entries in the Register of Wakfs relating to the said wakf as are consequential upon its decision, and the court shall make such entries or amendments of such entries accordingly.

Maintenance of accounts and their audit.

6H. (*1*) Every mutawalli of a wakf in respect of which an entry has been recorded in the Register of Wakfs shall keep regular accounts of all moveable and immovable property received, and of all payments and alienations made and incumbrances created by him on behalf of the wakf of which he is the mutawalli. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(*2*) The account shall be balanced on the thirty-first day of March in each year, and shall be examined and audited annually or at such other intervals, and in such manner as may be prescribed and by the persons referred to in section 6.

(*3*) Every auditor acting under sub-section (*2*) shall have access to the accounts and to all books, vouchers and other documents and records in the possession and under the control of the mutawalli:

Provided that, if it is proved to the satisfaction of the court that the gross annual income of any particular wakf is less than two hundred rupees, the court may by order in writing exempt such wakf from the provisions of this section.

Annual contribution from wakfs.

6I. Every wakf shall, for the purpose of meeting the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the registers of wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act, be liable to pay to the Wakf Administration Fund of the district concerned annually such contribution, on such date and in such manner as may be prescribed:

Provided that the [1][Provincial Government] may, by rules made in this behalf, exempt from the provisions of this section any particular wakf or class of wakfs.

Wakf Administration Fund.

6J. For each district there shall be created a fund to be called the Wakf Administration Fund of the district concerned, and there shall be placed to the credit thereof the following sums, namely:—

(*a*) any fee which may be levied under this Act,

(*b*) contributions under section 6I,

(*c*) any sums received by the Wakf Administration Fund from private sources,

(*d*) any sums allotted by [2][any Government] or by any local authority to the Wakf Administration Fund.

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[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "any Government" were substituted for the word "Government", *ibid.*

6K. The Wakf Administration Fund of a district shall be under the control and management of the court and shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the Register of Wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act. Application of Wakf Administration Fund.

PART VI.

Supervision and Control.

6L. (*1*) There shall be constituted in each district a wakf committee to advise and assist the court in all matters relating to the registration, superintendence, administration and control of wakfs. Constitution and appointment of Wakf Committee.

(*2*) The Committee shall consist of :—

(*a*) the members of the Indian and [1][Provincial Legislatures],

(*b*) two members elected in the prescribed manner by the mutawallis of all wakfs in the district registered under the Act,

(*c*) two members elected in the prescribed manner by the members of each district local board in the district professing the Mussalman faith from among their number,

(*d*) one member elected in the prescribed manner by the members professing the Mussalman faith of each municipality in the district constituted under the Bombay District Municipal Act, 1901,

Bom. III of 1901.

(*e*) two members elected in the prescribed manner by the members professing the Mussalman faith of each municipality in the district constituted under the City of Bombay Municipal Act, 1888, the City of Karachi Municipal Act, 1933, or the Bombay Municipal Boroughs Act, 1925, and

Bom. III of 1888. Bom. XVII of 1933. Bom. XVIII of 1925.

(*f*) such other members not exceeding one-fourth of the total number of the members of the Committee as the [2][Provincial Government] may nominate :

Provided that no person who does not ordinarily reside in the district or does not profess the Mussalman faith shall be eligible to be a member of the Committee.

6M. (*1*) It shall be competent to the court to refer at any time to the Wakf Committee or any three or more members thereof, for advice, opinion, enquiry, report or recommendation, within such time as the court may direct, any matter relating to the registration, superintendence, administration and control of wakfs, and in particular any matter relating to— Functions of Wakf Committee.

(*a*) the conduct of a mutawalli or a trustee in the administration of a wakf or his fitness to continue as a mutawalli or a trustee,

[1] The words "Provincial Legislatures" were substituted for the words "Local Legislatures", by the Adaptation of Indian Laws Order in Council.

[2] The words "Provincial Government" were substituted for the words "Local Government" *ibid.*

(*b*) the settlement, cancellation or alteration of a scheme for the administration of a wakf, or

(*c*) the application of the funds of a wakf or any surplus thereof.

(*2*) When the court has referred any of the matters mentioned in sub-section (*1*) to a wakf committee or any members thereof for advice, opinion, enquiry, report or recommendation, and the committee or the members thereof, as the case may be, have, either unanimously or by a majority, made their recommendation in relation to the matter referred to them, the court may pass orders as it thinks fit after giving due consideration to such recommendation—

(*i*) suspending, removing or dismissing a mutawalli or trustee,

(*ii*) appointing a new mutawalli or trustee,

(*iii*) settling, cancelling or altering a scheme for the administration of a wakf,

(*iv*) directing the application, investment or deposit of the funds of a wakf or any surplus thereof in a particular manner or to a particular purpose,

(*v*) generally for carrying out the purposes of the Act:

Provided that nothing in this section shall be deemed to authorize the court to pass any order which is inconsistent with the objects and purposes of the wakf:

Provided further that no order under this section shall be passed to the prejudice of any mutawalli or trustee without giving such mutawalli or trustee an opportunity to be heard.

(*3*) For the performance of any of the duties under sub-section (*2*) the Wakf Committee or any members thereof to whom the court has referred any matter for advice, opinion, enquiry, report, or recommendation, the committee or such members thereof may by order in writing require—

(*a*) the production of any document necessary for the purpose;

(*b*) the attendance of any person for the purpose of giving evidence or for the production of any document referred to in clause (*a*).

(*4*) The provisions of sub-sections (*2*) and (*3*) of section 6C shall so far as may be, apply to any inquiry under sub-section (*1*) or (*2*).

Court's power to authorize members of Wakf Committee to institute suits, etc.

6N. Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, it shall be competent to the court, after such enquiry as it may think fit, (*a*) to authorize any one or more of the members of a Wakf Committee to institute or defend any suit or proceeding for the purposes of the protection or recovery of the property of a wakf or for the application of the property of a wakf to any public, charitable or religious purpose, and (*b*) to allocate from the Wakf Administration Fund such sums as may, in the opinion of the court, be necessary for the aforesaid purpose. V of 1908.

Inspection of wakf property, records and accounts.

6O. (*1*) It shall be competent to the court to direct one or more members of the Wakf Committee to undertake the inspection, in the prescribed manner, of the property, records and accounts of any wakf and to report to the court, within such time as the court may direct, the result of such inspection.

(*2*) It shall be competent to the court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed.

6P. It shall be competent to the court at any time to order a special audit of the accounts of a wakf by an accountant possessing the prescribed qualifications and to order the cost of such audit to be paid by the mutawalli from the income of the property of the wakf or out of the Wakf Administration Fund. Court's power to order special audit.

[1]6Q. There shall be published annually on such date as the [2][Provincial Government] may determine in the [3][*Official Gazette*] and in the principal vernacular of the district in a newspaper circulating therein a list of wakfs and a statement of the sums standing to the credit of the Wakf Administration Fund, under the signature of the court and in such form as the [2][Provincial Government] may prescribe." Publication of lists of wakfs.

6. After section 6Q inserted by this Act, into the principal Act, the heading " Part VII " shall be inserted. Insertion of a new heading after section 6Q.

7. In section 7 of the principal Act after the word and figure " section 4 ", the words and figures " section 6A or section 6B or section 6C or section 6E " shall be inserted. Amendment of section 7 of XLII of 1923.

8. In section 8 of the principal Act,— Amendment of section 8 of XLII of 1923.

(*a*) after the word and figure " section 4 " the words and figures " or section 6A or section 6C or section 6E " shall be inserted ; and

(*b*) after the word and figure " section 5 " the words and figures " or section 6B or section 6C " shall be inserted.

9. In section 9 of the principal Act,— Amendment of section 9 of XLII of 1923.

(*a*) after the word and figure " section 4 ", the words and figures " or section 6A or section 6C or section 6E " shall be inserted ;

(*b*) after the word and figure " section 5 ", the words and figures " or section 6B or section 6C " shall be inserted ;

(*c*) after the word and figure " section 6 ", the words and figures " or section 6H or section 6P or any entry in the Register of Wakfs or any statement, notice, intimation, report, accounts or any document filed under this Act " shall be inserted.

10. After section 9 of the principal Act, the following shall be inserted, namely :— Insertion of new section after section 9 of XLII of 1923.

V of 1908 " 9A. (*1*) The provisions of the Code of Civil Procedure, 1908, relating to— Provisions of Code of Civil Procedure to apply.

(*a*) the proof of facts by affidavits,

(*b*) the enforcing of the attendance of any person and his examination on oath,

(*c*) the enforcing of the production of documents, and

(*d*) the issuing of commissions

shall apply to all proceedings held by the court under this Act and provisions relating to the service of summonses shall apply to the service of notices thereunder.

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[1] The words " if the Provincial Government so directs " have been inserted after the words " *Official Gazette and* " by Bom. 10 of 1944, s. 2, read with Bom. 25 of 1948, s. 3.

[2] The words " Provincial Government " were substituted for the words " Local Government " by the Adaptation of Indian Laws Order in Council.

[3] The words " *Official Gazette* " were substituted for the words " Local Official Gazette ", *ibid.*

(*2*) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders passed by the court under this Act."

Heading after section 9A of this Act.

11. After section 9A inserted by this Act, into the principal Act, the heading " Part VIII " shall be inserted.

Amendment of section 10 of XLII of 1923.

12. In section 10 of the principal Act—

(*a*) after the word and figure " section 4 ", the words and figures " or section 6A or section 6C or section 6E " shall be inserted ;

(*b*) after the word and figure " section 5 ", the words and figures " or section 6 or section 6C " shall be inserted ;

(*c*) after the word " accounts " where it occurs for the first time, the words, figure and letter " or who is required by section 6H to keep regular accounts " shall be inserted ;

(*d*) after the word " document " where it occurs for the second time, the words "or to keep regular accounts " shall be inserted ;

(*e*) after the word " statement " where it occurs for the forth time the words " or keeps accounts " shall be inserted.

Insertion of new sections after section 10 of XLII of 1923.

13. After section 10 of the principal Act the following shall be inserted namely :—

Penalty for non-compliance with any other order.

" 10A. (*1*) If any person fails to comply with any order passed by the Court or by the Wakf Committee or any member thereof under or in pursuance of the provisions of this Act, such person shall, if such failure to comply is not punishable under any of the sections of this Act, be on conviction punishable with fine which may extend to one thousand rupees.

(*2*) A Criminal Court may, in passing an order, of conviction for an offence sub-section (*1*), specify the period within which the person convicted shall comply with the provisions of this Act which may be found to have been contravened by him, and may also prescribe a daily fine not exceeding Rs. 50 for every day for the period during which the default continues after the expiry of the period so specified :

Provided that, if the person failing to comply with any direction issued by such court satisfies such court that there is good reason for his failure to do so and applies for an extension of the period specified under this section, such court may if it thinks fit, extend the period and may remit the whole or any part of the fine paid or due.

Cognizance of offences.

10B. (*1*) No prosecution under this Act shall be instituted except by or with the previous sanction of the Court given in the prescribed manner.

(*2*) No Criminal Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try an offence under this Act.

Prosecution of, and suits against, persons acting in good faith.

10C. No suit or prosecution or other proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

10D. All sums due under this Act shall be recoverable as arrears of land revenue". Recovery of sums due under this Act.

14. (*1*) In sub-section (*2*) of section 11 of the principal Act— Amendment of section 11 of XIAI of 1923.

(*a*) in clause (*a*) after the words and figure " section 3 ", the words and figures " or under section 6A or section 6C " shall be inserted ;

(*b*) for clause (*b*) the following shall be substituted, namely :—

" (*b*) the manner in which notice to be published under section 4 and the fees to be charged upon application made to the court under sub-section (*1*) of section 4 or under section 6A or section 6B or section 6C " ;

(*c*) in clause (*c*) after the word and figure " section 5 ", the words and figures " or section 6B or section 6C " shall be inserted ;

(*d*) in clause (*d*) after the word and figure " section 6 ", the words and figures " or section 6H or section 6P " shall be inserted ;

(*e*) in clause (*e*), after the brackets and letter " (*e*) " the words " the manner of inspection and " shall be inserted ;

(*f*) after clause (*f*), the following shall be inserted, namely :—

"(*f1*) the manner in which subject to the provisions of section 9A an inquiry shall be held by the Court and the Wakf Committee under section 6C or 6M and the manner in which the parties shall be represented in such inquiry and the costs of such inquiry shall be borne,

(*f2*) the manner in which the Register of Wakfs shall be prepared and maintained under section 6D,

(*f3*) the form in which a change in any of the particulars recorded in the Register of Wakfs shall be reported and the amount of fee to accompany such report and the manner in which the inquiry shall be held and the entries in the Register of Wakfs shall be amended under section 6E,

(*f4*) the form in which the accounts shall be prepared, kept and furnished, the particulars to be entered therein, and the manner in which, and the interval at which such accounts shall be audited under section 6H,

(*f5*) the amount of contribution, the date on which and the manner in which it shall be paid and exemptions granted under section 61,

(*f6*) the appointment and remuneration of auditors appointed under the Act,

(*f7*) the management, custody, investment and disbursement of the Wakf Administration Fund,

(*f8*) the purpose for which a Wakf Administration Fund shall be applied under section 6K,

(*f9*) the number of members who shall constitute a Wakf Committee, the period of office of a Wakf Committee and the manner in which such committee shall hold its meetings and the procedure to be followed at their meetings,

(*f10*) the manner in which the inspection of the property, records and accounts of a wakf shall be carried out, the sum which shall be paid in respect of the costs of the members of the Wakf Committee undertaking such inspection, the terms and conditions on which persons shall be employed and the remuneration which shall be paid to such persons, under section 6O,

(*f11*) the qualifications of an accountant appointed under section 6P,

(*f12*) the form in which a list of wakfs shall be published under section 6Q."

(2) After sub-section (2) of section 11 of the principal Act, the following new sub-section shall be added, namely :—

"(3) Rules made under this section shall be laid [1][before each of the Chambers of the Provincial Legislature] at the session [2][thereof] next following, and shall be liable to be modified or rescinded by a resolution [3][in which both the Chambers concur] and such rule shall after notification in the [4][*Official Gazette*] be deemed to have been modified or rescinded accordingly :

Provided that when in the opinion of the [5][Provincial Government] such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the [5][Provincial Government] may by notification in the [4][*Official Gazette*] declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded."

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[1] The words "before each of the Chambers of the Provincial Legislature" were substituted for the words "upon the table of the Bombay Legislative Council" by the Adaptation of Indian Laws Order in Council.

[2] The word "thereof" was substituted for the words "of the said Council", *ibid.*

[3] The words "in which both the Chambers concur" were substituted for the words "of the said Council", *ibid.*

[4] The words "*Official Gazette*" were substituted for the words "Local Official Gazette", *ibid.*

[5] The words "Provincial Government" were substituted for the words "Local Government" *ibid.*